

Appeal from decision of New Mexico State Office, Bureau of Land Management, canceling noncompetitive oil and gas lease. NM-A 44783 TX.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Lands Subject to -- Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Lands Subject to

BLM must cancel a noncompetitive oil and gas lease of acquired lands where it is determined after lease issuance that the lands are situated within the boundaries of an incorporated city. Such lands are not subject to oil and gas leasing under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (Supp. V 1981).

APPEARANCES: Robert Lyon, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Robert Lyon has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated May 12, 1983, canceling his noncompetitive oil and gas lease, NM-A 44783 TX.

On March 13, 1981, appellant filed a noncompetitive oil and gas lease offer for 1,430.94 acres of acquired land situated in McLennan County, Texas, pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (Supp. V 1981). The lands, described by acquisition tract number, are included in the Lake Waco project administered by the U.S. Army Corps of Engineers, known as the Waco Reservoir. 1/ Effective January 1, 1983, a noncompetitive oil and gas lease was issued to appellant by BLM covering all of the requested land.

By letter dated March 21, 1983, BLM requested the Appraisal District, McLennan County, Texas, to indicate in part which tracts included in oil and

1/ Appellant requested the following tracts: 1212 through 1217, 1219 through 1226, 1228 through 1229, 1231, 1233, 1237 through 1238, 1239-1, 1239-2, 1240 through 1244, 1249 through 1250, 1253 through 1254, 1256, 1258 through 1260, 1267-1, 1268 through 1272, and 1279.

gas lease NM-A 44783 TX lie "within incorporated city limits and which might possibly lie within the extraterritorial limits of a city." ^{2/} On March 28, 1983, the Appraisal District informed BLM that with one exception, not involved herein, "all of the tracts acquired in fee by the Corps of Engineers for the Waco Reservoir have 3] been annexed to the City of Waco" and that "tracts adjacent that lie in the flowage easement areas are within the extraterritorial jurisdiction of the city." (Emphasis in original.) By memorandum dated March 29, 1983, BLM requested the Appraisal District to "mark areas within city limits of any city and those within extraterritorial limits of any city" apparently on the project map (Segment "12") for the Waco Reservoir of the Corps of Engineers, which depicted the land requested by appellant. In a memorandum, dated April 8, 1983, the Planning Department, Waco, Texas, stated that it had marked the "City of Waco corporate limits" on the project map. The map indicates that all of the tracts requested by appellant are within the corporate limits of the city of Waco.

In its May 1983 decision, BLM canceled appellant's noncompetitive oil and gas lease because all of the requested land is "within the incorporated city limits of Waco, Texas," and, therefore, not subject to leasing under 43 CFR 3101.2-1(b).

In his statement of reasons for appeal, appellant contends that land "within city limits" may be leased under an exception which permits oil and gas leasing of land outside the "inner city limits," citing Bernard Silver, A-30873 (Nov. 28, 1967). Appellant asserts that the requested land is within the "outer city limits" but "excluded from the city" by an inner city boundary, i.e., the Waco Reservoir.

[1] It is well established that acquired land within the boundaries of "incorporated cities, towns and villages" is not subject to oil and gas leasing pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, supra; see also 43 CFR 3101.2-1(b) (1982); C. H. Nicholson, 75 IBLA 234 (1983). Accordingly, BLM may properly reject a noncompetitive oil and gas lease offer for such acquired land, C. H. Nicholson, supra. Moreover, if a lease has erroneously been issued in contravention of the statutory mandates, BLM must cancel the lease. See D. M. Yates, 76 IBLA 208 (1983); Oil Resources, Inc., 14 IBLA 333 (1974).

However, appellant asserts that this case comes within an exception to the general rule that land may not be leased for oil and gas in incorporated cities, towns, and villages, i.e., where the land is "excluded from the city." The case cited by appellant, Bernard Silver, supra, referred to an earlier case, Tom H. Dowlen, A-27724 (Nov. 17, 1958), where the appellant had successfully proved on appeal that his noncompetitive oil and gas lease offer had been improperly rejected. The Assistant Solicitor stated in Bernard Silver, supra at 2:

^{2/} On Nov. 22, 1982, BLM had been informed by the Corps of Engineers by memorandum, dated Nov. 12, 1982, that the "Waco Lake Project is located totally within the Waco City limits." (Emphasis in original.)

On Dowlen's appeal to the Secretary, he established by maps and other evidence that although the land was situated within the outer city limits of Los Angeles, the land itself was excluded from the city by inner city boundaries drawn around the land. In other words, the tract applied for by Dowlen was like the hole in a doughnut and not a part of the doughnut itself, which comprised the land in the city of Los Angeles.

However, the Dowlen case is simply not applicable to the present case for the same reason that it was found not applicable in Silver:

So far as the maps and diagrams in the case files show, each tract applied for is situated within the city limits of Los Angeles, Santa Monica, or Beverly Hills and none of the tracts is excluded by the drawing of inner city limits around the tract as in the Dowlen case. There is no doughnut situation, with a hole carved out of the city in which the tract applied for is situated. Thus the Dowlen case is vitally different in its facts.

Id.

The record indicates that appellant is correct in the sense that the requested land is apparently separated by the Waco Reservoir from the "inner city," as that term is colloquially defined, *i.e.*, the commercial and residential heart of a city. However, there is no evidence that this land, although within the limits of the incorporated city of Waco, Texas, is somehow excluded therefrom. Accordingly, we conclude that BLM properly canceled appellant's noncompetitive oil and gas lease as having been erroneously issued for unavailable land. Paul S. Coupey, 64 IBLA 146 (1982), and cases cited therein.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

